

26 April 2018

Code Working Group
c/- Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
P O Box 1473
WELLINGTON

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Submitted by email to: code.secretariat@mbie.govt.nz

Dear Sir/Madam

Submission to the Code Working Group Consultation Paper

Please find attached our submission on the above Consultation Paper, due by Monday, 30 April 2018. No part of our submission is confidential.

We summarise our key comments in an executive summary, and our detailed answers are included in your Submission Template.

Any questions regarding our submission can be directed to Cameron Watson or David Sawtell. Their contact details are provided below.

Yours faithfully

Craigs Investment Partners Limited

S 9 (2) (a)

David Sawtell

Head of Advisory

S 9 (2) (a)

Cameron Watson

Quality of Advice Manager

S 9 (2) (a)

Executive summary

1. **We thank the CWG for their efforts to date** - The Consultation Paper is comprehensive and addresses the pertinent issues, in our view.
2. **Code flexibility will underpin accessibility to advice** - We welcome the CWG's acknowledgement that the Code must be able to accommodate a wide range of advice situations (paragraph 37).

Our firm provides a wide range of advice to our clients. We help people with KiwiSaver, assist with simple transactional broking requests to buy and sell shares and fixed interest, provide clients with guidance on their share portfolios, and provide a more comprehensive goals-based investment planning service. We also offer a DIMS.

A key element that will drive the availability of advice is, in our view, to ensure advice, and therefore the documentation, can be scaled to suit the needs of each client.

Our advisers provide clients with advice on their situation and goals, and manage the client's underlying investment portfolio. The Code should ensure an ongoing client relationship and service does not trigger a full re-documentation of the advice process when the advice provided could be a small rebalancing change to an underlying portfolio of direct assets.

We recognise the tight timeframe the CWG is working under, but we would appreciate further engagement with the CWG if possible to discuss how advice can be scaled and how the Code applies to ongoing advice situations.

3. **Structure of the Code** – We hope the new Code can build on the existing Code and become a succinct, clearly-worded and well-structured 'working' document. We note Codes from other professions are structured with a set of 8 -10 principles, under which sit 3 -10 standards, along with a guidance note for each principle that provides an interpretation of what the principle means and its intended purpose. This sort of structure may be worth replicating.

Code of Professional Conduct for Financial Advice Services

Submission Template

Submissions close Monday 30 April 2018

Please send submissions to:

code.secretariat@mbie.govt.nz or

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Submissions process

The Code Working Group (CWG) seeks written submissions on the issues raised in this document by **5pm on Monday 30 April 2018**

We welcome submissions on any or all consultation questions. You are welcome to comment only on the issues most relevant to you.

Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please direct any questions that you have in relation to the submissions process to code.secretariat@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform the CWG's development of the draft Code. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

The CWG intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. The CWG will consider you to have consented to publication of your submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. The CWG will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals. Any personal information you supply to the CWG in the course of making a submission will only be used for the purpose of assisting in the development of the draft code. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that the CWG may publish.

Information about you

<i>Share your details</i>	
i.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Cameron Watson, Craigs Investment Partners</p>
ii.	<p>Please provide your contact details</p> <p>S 9 (2) (a)</p> <p>L32, Vero Centre, 48 Shortland Street, Auckland</p>
iii.	<p>Please provide any other information about you or your organisation that will help us understand your perspective (e.g. the financial advice situations you have experience with)</p> <p>Craigs Investment Partners is one of New Zealand’s largest investment advisory and management firms, offering personalised investment solutions to private, corporate and institutional clients. We have 17 offices across New Zealand, 140 advisers (all Authorised Financial Advisers, or studying towards this), 440 staff, 50,000 clients and over \$14 billion of client funds under management.</p> <p>We have been engaged in the consultation process and made submissions on the Issues Paper in July 2015, the Options Paper in March 2016, the Exposure Draft Bill in March 2017 and the Financial Services Legislation Amendment Bill in February 2018.</p>
iv.	<p>Please indicate whether your submission contains any information that is confidential or whether you do not wish your name or any other personal information to be included in a summary of submissions. (See page 2 of this document)</p> <p>Our submission does not contain any confidential information and our details can be published.</p>

Principles for drafting the Code

<i>Share your views</i>	
A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>We agree with the five underlying principles outlined in the consultation document. The focus on producing a document that is client centric and easy to read is commendable.</p> <p>The wording of the current Code is relatively long and complex. This detracts from its effectiveness as a working document for practitioners, and makes it inaccessible to consumers.</p> <p>We hope the new Code can build on the existing Code and become a succinct, clearly-worded and well-structured ‘working’ document. We have seen Codes from other professions which are structured with a set of 8-10 principles under which sit 3-10 standards, along with a guidance note for each principle that provides an interpretation of what the principle means and its intended purpose. This sort of structure is clear and may be worth replicating.</p> <p>We also suggest the wording of “good advice outcomes” is perhaps excessively open-ended and could be improved with slightly different wording, such as “good advice experience” or simply “good advice”.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>No.</p>

Ethical behaviour

Act with honesty, fairness and integrity

<i>Share your views</i>	
C.	<p>Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.</p> <p>We agree with a requirement to act ethically. Adding the word 'honesty' is a positive step as it is clearer and more meaningful word for consumers than 'integrity'.</p>

Keep the commitments you make to your client

D.	<p>Should minimum standards for ethical behaviour for the provision of financial advice extend beyond strict legal obligations, to include meeting less formal understandings, impressions or expectations that do not necessarily amount to strictly legal obligations? If no, please give reasoning. If yes, please propose how a standard for such commitments might be framed.</p> <p>Extending the ethical standard beyond legal obligations could create an unintended level of uncertainty and risk for practitioners. We agree with the CWG's view outlined in paragraphs 88 and 89 of the consultation document that ethical standards around managing client expectations, service standards and commitments will vary across firms. On this basis, we believe they should not be hardwired in the Code, but be required to be addressed in a FAP's own code of ethics.</p>
E.	<p>If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?</p> <p>Please see our answer in D above.</p>

Manage and fully disclose conflicts of interest

F.	<p>Should the Code include a minimum standard on conflicts of interest in addition to the legislation?</p> <p>We support the principle that firms be required to have processes in place to manage conflicts of interest. We believe these will be more effective if positioned as overarching principles rather than trying to address specific situations.</p>
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Do no harm to the client or the profession

G.	<p>Do you agree that a person who gives financial advice must not do anything or make an omission that would or would be likely to bring the financial advice profession into disrepute? If not, please set out your reasoning.</p> <p>We agree. Currently covered by CS-2.</p>
H.	<p>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?</p> <p>We do not believe it is necessary given the requirement in FSLAB to give priority to a client's interests, along with the client care and ethical obligations likely to be included in the Code.</p>

Keep your client's data confidential

I.	<p>In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?</p> <p>While an important issue, we do not believe this should be addressed specifically in the Code as it is not directly relevant to the provision of financial advice. General provisions of privacy and ethical conduct arguably cover this area.</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>No. These issues are covered by the Privacy Act 1993 (and the recently introduced Privacy Bill). Rather than re-stating an existing legal obligation, the Code could more appropriately include a brief reference to the Privacy Act, as is currently included in CS-12 of the current Code.</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>No.</p>

Ethical processes in Financial Advice Provider entities

L.	<p>Do you agree that the Code should require the Financial Advice Provider to document and maintain its "ethical processes"?</p> <p>Yes. Firms should document their ethical processes and standards.</p>
M.	<p>Should the Financial Advice Provider be required to have a publicly available corporate code of ethics? Are there particular situations where a corporate code of ethics should be or should not be required?</p> <p>Yes. A firms' code of ethics should be publically available.</p>

N.	<p>Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?</p> <p>These issues should be covered by the firm's code of ethics and internal governance processes. Direction is also already provided by the FMA's guidance on governance and culture.</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>The IOSCO standards and principles provide a useful framework in our view.</p>

Ethics training

P.	<p>Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.</p> <p>Ethics training should already be part of ongoing CPD/training given the ethical obligations under the Act and Code naturally give rise to ongoing training needs.</p>
Q.	<p>Should ethics training requirements apply to all officers and employees of a Financial Advice Provider, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.</p> <p>See our answer in P above.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Covered above.</p>

Resolving ethical dilemmas

S.	<p>Do you agree that Financial Advice Providers should be required to have in place, and use, a framework for resolving ethical dilemmas that may arise in giving financial advice? If not, please set out your reasoning.</p> <p>This should be incumbent in a firm's ethical standards and processes, and given different firms will likely deal with vastly different situations, this is best dealt with through FMA licensing rather than detailed in the Code.</p>
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Compliance functions

T.	<p>Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?</p> <p>Yes, this should be part of prudent advice management process. There should be an explicit sign off the soundness of the advice process delivered by a firm's robo-advice platform. We would expect the detail to be dealt with through the licencing process.</p>
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U.	<p>Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.</p> <p>Yes, firms should have a whistleblowing policy. This issue should be included as part of FMA licencing.</p>
V.	<p>Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?</p> <p>This would arguably be part of routine monitoring. The scale and detail of which may need to be customised for different firms, and therefore more appropriately addressed through FMA licencing.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>-</p>

Responsibility for the whole advice process

X.	<p>Do you agree that Financial Advice Providers should be required to be able to demonstrate that they meet the standards of ethical behaviour as if the Financial Advice Provider carried out the whole advice process directly itself? If not, please set out your reasoning.</p> <p>Firms should not be able to contract out their ethical responsibility in advice delivery. They should be required to take all reasonable steps to ensure the duties are being undertaken in line with their own ethical standards.</p>
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Reinforcing good ethical behaviour

Y.	<p>What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?</p> <p>We support the objective to make the Code a 'working document'. Rather than mandating an explicit reference to the Code, firms should be responsible for ensuring the Code principles are embedded in their advice delivery.</p>
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Conduct and client care

Advice situations

<i>Share your views</i>	
Z.	Are there other delivery methods that should be considered when testing our thinking? -

Advice-giving standards

AA.	<p>How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA Code? In answering this question, please ignore “scope of advice” (CS-8) and “suitability” (CS-9 and part of CS-10).</p> <p>These code standards work adequately overall.</p> <p>In general terms, the Code could be improved by being more concise and having the key elements more clearly articulated. It is also long to be considered a ‘working document’. We believe it would be improved if it focused on the key elements and did not include the level of detail contained in the current Code.</p> <p>In respect to these specific code standards, some improvement could be made on wording which would assist clarity. Covered in BB.</p>
BB.	<p>Could any aspect of the current client care standards be worded better? (For example, we are aware that the definition of “complaint” could be improved.)</p> <p>As noted in AA, we believe there is scope to improve the wording, and therefore clarity of these key code standards.</p> <p>Specific comments on each code standard:</p> <p>CS-6 Behaving professionally</p> <p>The ordering of this code standard could be improved. CS-6(c) covering the assessment and review of products recommended is a key element of this code standard but it arguably does not have the prominence it deserves.</p> <p>We suggest the clarity of this standard could be improved by continuing the bullet points across the other elements.</p> <p>CS-7 Ensuring retail clients can make informed decisions about using an AFA</p> <p>This code standard could reference the disclosure regulations (under consultation at present) which would avoid the need to duplicate the elements of the disclosure regulations in this code standard, as they are at present.</p> <p>There is also a requirement to provide any other information that the client needs to make an informed decision. This is undefined. Could it be improved by providing some context, such as ‘any other information that a retail client would reasonably expect’, as included in CS-10.</p> <p>No changes suggested for CS-11, 12 or 13.</p>

CC.	<p>Are there any aspects of the current client care standards that could be expanded or clarified (for example, in light of the published findings of the Disciplinary Committee)?</p> <p>We believe the current client standards are appropriate.</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>We understand the CWG's intention is to bring across these client care standards to the new Code with minor changes. On this basis, there should not be any material increase in compliance costs.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>No.</p>

Advice process

FF.	<p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p>We agree with the principles outlined in the consultation document that the advice process should be client-centric and the complexity of an advice process should be calibrated to the complexity of the financial advice being provided and products recommended.</p> <p>We also note the statement in paragraph 128 which outlines the CWG's view that the existing Code works well for new clients, initial product advice and when comprehensive advice is provided, but does not accommodate as well an ongoing client relationship or limited advice. We agree with this view.</p> <p>Our client relationships are ongoing and also multi-faceted. We provide advice based on a client's needs and goals and provide a recommended strategy to meet these goals. As well, rather than outsource the portfolio to a series of 'products', our advisers also construct a portfolio of direct assets and manage this portfolio on an ongoing basis. Both the portfolio and client circumstances and goals are reviewed regularly. The Code should accommodate ongoing relationships that include not only advice but also portfolio management.</p> <p>We also agree that 'Financial Advice Providers should be able to justify how and why their advice processes deliver good advice outcomes and meet the regulatory requirements.'</p> <p>Documentation should be clear and effective for clients and avoiding the situation where clients are swamped in paper, especially when the advice provided is limited and straightforward, should be the aim of this process.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Any guidance should recognise that the Code will apply to a wide range of advice situations, which will involve very different client circumstances and issues that need to be considered.</p>

<p>HH.</p>	<p>Are there any other important aspects you think should be included in the advice process for all types of financial advice activities under the new regime?</p> <p>We agree with the elements outlined in the consultation document.</p> <p>We do though note that the requirement for an advice process is designed to apply to “one-off” advice situations covering a material change in the underlying product exposure or portfolio. For example, moving from one KiwiSaver fund to another or from an insurance product provider to another. We also expect it is intended to cover the advice process involved in engaging a client in a managed portfolio service (such as an investment planning service).</p> <p>We agree with this approach. However, while we believe this process should apply to the ongoing goals-based advice provided to a client, it should not be required on the ongoing management of a portfolio made up of direct securities. Our advisers have a dual role. They provide ongoing advice on the client’s needs and goals, and also provide the ongoing management of the underlying portfolio (a role which is often outsourced to fund managers by others).</p> <p>The advice process quite rightly applies when the service is established with the client. But it would be nonsensical if the Code required the full advice process to be repeated each time a small change was made to the underlying portfolio. For instance, reweighting some securities as part of rebalancing. A rationale for the recommendation and brief suitability analysis should suffice in these situations.</p> <p>Any portfolio recommendation will sit within the context of the ongoing service and mandate established with the client, and the information previously provided to the client on the scope of service, strategy, risks and benefits.</p> <p>We recommend that if the Code sets out aspects of the advice process, these are drafted in general terms so they can be tailored to a range of advice situations. The wording of the existing CS-10 should also accommodate ongoing advice situations.</p>
<p>II.</p>	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>Please refer to our answer in HH above.</p>
<p>JJ.</p>	<p>Are there any situations in which an advice process need not be followed?</p> <p>See our answer to HH above.</p>

Personalised suitability

<p>KK.</p>	<p>What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?</p> <p>We welcome the CWG’s focus on suitability. We believe the discussion around what replaces the existing ‘class’ and ‘personalised’ distinction is a key issue.</p> <p>From our reading of the Consultation Paper, the CWG proposes advice be split between generic and personalised suitability. Providers will have the ability to offer generic suitability, as a replacement of class advice, and reiterates the ability available under the current Code that personalised advice can be scaled or scoped to suit the needs of the client. We broadly agree with this approach.</p>
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	<p>We look forward to engaging with CWG further on how generic suitability can be framed to cover the spectrum of straightforward advice situations, including simple transactional broking services and advice on a share portfolio advice.</p> <p>We also note that paragraph 141 in the Consultation Paper infers that a provider must consider a client’s broader financial situation before the advice can be limited to a generic suitability service. In our view, the suitability standard should be drafted so that the consideration of the client’s situation and goals is relative to the scope of advice.</p> <p>In our view, being able to provide scaled or limited personalised advice is an important element of the current Code. The new Code should provide as much certainty as possible for Financial Advice Providers in the area of offering scaled or limited advice.</p>
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Organisational standards

<p>LL.</p>	<p>What are the practical advantages and disadvantages of including organisational standards as described? What explanatory material or examples could we provide in the Code that might help to make these standards easier to comply with in practice?</p> <p>We support the Code requiring providers to document how it will ensure its organisational arrangements will support the delivery of good advice.</p> <p>We agree with the framework suggested in paragraph 151 that FAPs should be able to document how it ensures good advice outcomes without needing to reply on traditional detailed paperwork with each client. This rightly puts the focus on culture, competence, business processes and client centricity.</p>
<p>MM.</p>	<p>Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.</p> <p>No.</p>

General competence, knowledge and skills

<i>Share your views</i>	
NN.	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Agree.</p>
OO.	<p>Are there other factors, which contribute to combined expertise, that we have not listed? We are particularly interested in factors that are relevant to financial advice that is given by a Financial Advice Provider directly, including by digital means.</p> <p>No.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>-</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>-</p>
RR.	<p>In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?</p> <p>-</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>We agree with the principle that Financial Advisers and Nominated representatives should be able to demonstrate a minimum standard of general competence, knowledge and skill. However, rather than the Code including a stipulated renewing obligation we believe Advisers should retain the flexibility to meet this obligation through their Continuing Professional Development (CPD). Completing CPD will therefore demonstrate competence.</p> <p>The current Code already requires advisers to ‘keep up to date with developments relevant to the adviser’s practice’. We presume a similar requirement will be carried over into the new Code, along with perhaps a more explicit obligation to include training on regulation within CPD.</p>

Particular competence, knowledge and skills

<i>Share your views</i>	
TT.	<p>What are the advantages and disadvantages of our approach of identifying two types of financial advice? What impact would it have on the type of advice you give and on your compliance costs?</p> <p>Given the proposed step up in competence standards for “financial planning” (a term as yet undefined in the Bill), it would be helpful for the Code to clearly delineate the boundary between “product advice” and “financial planning”. For example, product recommendations may involve consideration of investment objectives and financial goals, but will not necessarily amount to financial planning.</p>
UU.	<p>How should RFA’s experience be recognised?</p> <p>-</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>-</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>-</p>
XX.	<p>In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?</p> <p>-</p>
YY.	<p>What alterations, if any, would you suggest to the baselines we have nominated: specialist strand for product capability, Level 5 for discipline capability, and relevant degree (or other degree plus Level 6) for planning capability?</p> <p>We suggest any degree, not a ‘relevant’ degree is more appropriate. Many people come to financial advice later in their career – often from another field. This prior learning should be recognised and then complemented with further specific training, such as the Level 6 certificate.</p> <p>Some consideration should be given on how to transition new people into the industry, for example, a graduate with 10 years working experience who joins a provider and wants to become a financial adviser. Perhaps they work under supervision while studying for their diploma and/or the provider can draw on its ‘combined expertise’ to support new advisers.</p>

Other comments

<i>Share your views</i>	
ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>We welcome any opportunity to engage further with the Code Working Group.</p>